

SOAH DOCKET NO. 582-08-0523  
TCEQ DOCKET NO. 2007-0768-AIR-E

THE EXECUTIVE DIRECTOR OF  
THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY,  
Petitioner

v.

ADVANTAGE ASPHALT PRODUCTS,  
LTD.;  
Respondent

§  
§  
§  
§  
§  
§  
§  
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

2008 FEB 11 PM 4:19  
CHIEF CLERKS OFFICE

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

**EXECUTIVE DIRECTOR'S EXCEPTIONS TO THE ADMINISTRATIVE LAW  
JUDGE'S PROPOSAL FOR DECISION AND ORDER**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE STEPHEN J. PACEY:

COMES NOW the Executive Director of the Texas Commission on Environmental Quality ("Commission") represented by the Litigation Division. After having reviewed the Administrative Law Judge's Proposal for Decision and Default Order, the Executive Director respectfully files the following exceptions to the proposed Default Order:

**I.**

The Executive Director respectfully recommends that a Conclusion of Law be added to the Default Order to reflect the enforcement authority of the Commission as Conclusion of Law No. 1 and the remaining Conclusions of Law be renumbered beginning with Conclusion of Law No. 2. The Executive Director respectfully recommends that the sentence, "The Respondent is subject to the Commission's enforcement authority pursuant to TEX. WATER CODE §§ 5.013 and 7.002" be added to the Default Order as Conclusion of Law No. 1.

**II.**

The Executive Director respectfully recommends that § 80.6 found in the first sentence of Conclusion of Law No. 5 (which is requested to be re-numbered as No. 6) be revised to include the full citation of 30 TEX. ADMIN. CODE § 80.6(b)(3) and that the sentence also contain a reference to 30 TEX. ADMIN. CODE § 1.12. The sentence should then read as follows: "As required by TEX. GOV'T CODE ANN. § 2001.052; TEX. WATER CODE ANN. § 7.058; 1 TEX. ADMIN. CODE § 155.27, and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 70.104 and 80.6(b)(3), Respondent was notified of the hearing on the alleged violations and proposed penalties."

III.

The Executive Director respectfully recommends that the reference to 30 Tex. Admin. Code §§ 70.106(b) and 80.113(d) be revised to correct the font to small caps instead of small letters in the second sentence of Conclusion of Law No. 5 (which is requested to be re-numbered as No. 6). The sentence should then read as follows: "Additionally, Respondent was notified, in accordance with 1 TEX. ADMIN. CODE § 155.55 and 30 TEX. ADMIN. CODE §§ 70.106(b) and 80.113(d), that if Respondent failed to appear at the hearing, a default judgment could be rendered against Respondent in which all the allegations contained in the notice of hearing would be deemed admitted as true."

IV.

The Executive Director respectfully requests that Ordering Provision No. 5 in the proposed Default Order be revised to delete "Respondent" and add "all parties." The sentence should be changed to: "As required by TEX. WATER CODE § 7.059, the Commission's Chief Clerk shall forward a copy of this Order to all parties."

Respectfully submitted,

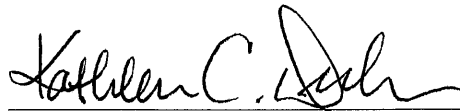
Texas Commission on Environmental Quality

Glenn Shankle  
Executive Director

Stephanie Bergeron Perdue  
Deputy Director  
Office of Legal Services

Mary R. Risner  
Director  
Litigation Division

by:



Kathleen C. Decker  
State Bar of Texas No. 05630500  
Litigation Division, MC 175  
P.O. Box 13087  
Austin, Texas 78711-3087  
(512) 239-6500  
(512) 239-3434 (FAX)

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 11th day of February, 2008, the original of the foregoing "Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision and Order" (Exceptions) were filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas. I further certify that on this day a true and correct copy of the foregoing Exceptions were sent to the following in the manner indicated:

**Via Facsimile Transmission: (512) 475-4994**  
**and First Class Mail, postage pre-paid**

Honorable Stephen J. Pacey  
Administrative Law Judge  
State Office of Administrative Hearings  
300 West 15<sup>th</sup> Street, Suite 502  
Austin, Texas 78711

**Via Certified Mail, Return Receipt Requested**  
**Article No. 7004 2510 0003 9118 1129**  
**and Facsimile Transmission: (806) 374-3980**

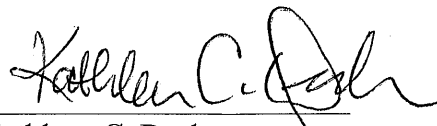
Mr. Brian R. Smith  
Attorney at Law  
Amarillo Building  
P.O. Box 9134  
Amarillo, Texas 79104-9134

**Via Certified Mail, Return Receipt Requested**  
**Article No. 7004 2510 0003 9118 1136**

Mr. Scott Knutson  
Registered Agent  
Advantage Asphalt Products, Ltd.  
P.O. Box 50353  
Amarillo, Texas 79159

**Via Hand Delivery**

Mr. Blas Coy, Jr., Attorney  
Office of Public Interest Counsel, MC-103  
Texas Commission on Environmental Quality  
Austin, Texas 78711-3087



Kathleen C. Decker  
Attorney  
Litigation Division